



HEALTH AFFAIRS



TRICARE
Management
Activity

Uses and Disclosures

HIPAA Training: 2005 Summer Sessions

TMA Privacy Office

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Agenda

- Definition of Uses and Disclosures
- Legal and Regulatory Requirements
- Minimum Necessary Requirements
- Permitted Uses and Disclosures
- Other Uses and Disclosures
- Accounting for Disclosures

Training Objectives

- Upon completion of this course, you will be able to:
 - Define Uses and Disclosures
 - Identify the legal and regulatory requirements
 - Explain requirements of the Minimum Necessary Requirement
 - Identify Permitted Uses and Disclosures
 - Other Uses and Disclosures
 - Describe the special requirements for Psychotherapy Notes
 - Define Incidental Uses and Disclosures
 - Explain the process and requirements for Accounting of Disclosures

Definition

Use and Disclosure

- **Use** is the sharing of information within an entity
- **Disclosure** is the sharing or release of PHI in any manner outside the covered entity
- HIPAA requires the use and disclosure of PHI in three instances only:
 - Treatment, payment, and healthcare operations (TPO)
 - To the individual when requested
 - To the HHS Secretary to determine compliance
- Other uses and disclosures are permitted subject to the requirements of the Rule (without the patient's opportunity to agree or object)

Legal and Regulatory Requirements

Legal and Regulatory Requirements

Objectives

- Upon completion of this lesson, you will be able to identify the:
 - Privacy Act requirements
 - HIPAA Privacy Rule requirements
 - DoD Regulation requirements
 - Service requirements

Legal and Regulatory Requirements

Privacy Act (1 of 2)

- Defines responsibilities for implementation
- Assures personal information about individuals collected by Federal agencies is limited to that which is legally authorized and necessary
- Personal information is maintained in a manner which precludes unwarranted intrusions upon individual privacy

Legal and Regulatory Requirements

Privacy Act (2 of 2)

- Responsibilities:
 - Each agency head shall establish and maintain procedures consistent with the Act
 - Prepare and publish a public notice of the existence and character of those systems consistent with guidance by GSA
 - Establish reasonable administrative, technical, and physical safeguards
 - Maintain an accounting of all disclosures of information from systems of records
 - Permit individuals to have access to records pertaining to themselves
 - Permit individuals to request that such record be amended

Legal and Regulatory Requirements

HIPAA Privacy Rule

- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
 - Overlaps with the Privacy Act of 1974
 - Individuals have the right to receive an accounting of disclosures of PHI made by the covered entity with exceptions of
 - Treatment
 - Payment
 - Healthcare operations
 - The accounting must include:
 - Disclosure of PHI that occurred after April 14, 2003 and based on an individual's request for an accounting

DoD Health Information Privacy Regulation 6025-18R (1 of 3)

- Implements HIPAA requirements throughout DoD
 - A covered entity (including a covered entity not part of or affiliated with the DoD) may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of the military mission

DoD Health Information Privacy Regulation 6025-18R (2 of 3)

- Appropriate Military Command Authorities
 - All Commanders who exercise authority over an individual who is a member of the Armed Forces
 - A person designated by a Commander to receive PHI
 - The Secretary of Defense
 - The Secretary of the Military Department for the Armed Forces for which the individual is a member
 - The Secretary of Homeland Security has command authority of a member of the Coast Guard

DoD Health Information Privacy Regulation 6025-18R (3 of 3)

- Purposes for which PHI may be used or disclosed to the military commander:
 - Determine member's fitness for duty
 - Determine member's fitness to perform mission, assignment, order, or duty, including compliance with any actions required as a precondition to performance of such mission, assignment, order or duty
 - To carry out any other activity necessary to the proper execution of the mission of the Armed Forces

Legal and Regulatory Requirements

Service Requirements

- Air Force
 - Air Force Instruction 41-210
 - Patient Administration Functions
- Navy
 - SECNAV Instruction 5211.5D
 - Department of Navy Privacy Act Program
- Army
 - Army Regulation 40-66
 - Medical Record Administration and Health Care Documentation

Legal and Regulatory Requirements

Summary

- You should now be able to identify the:
 - Privacy Act requirements
 - HIPAA Privacy Rule requirements
 - DoD Regulation requirements
 - Service requirements

Minimum Necessary Requirement

Minimum Necessary Requirement Objectives

- Upon completion of this lesson, you will be able to:
 - Define the Minimum Necessary Requirement
 - Describe the applicability of requirements of the Minimum Necessary Requirement when applied to various requests and disclosures

Minimum Necessary Requirement

Definition

- Requires covered entities to take reasonable steps to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose
- Implementing the Requirement
 - Identify people or groups of people in the workforce who need access to PHI to do their work
 - Further identify the classes of PHI those individuals need to access
 - Create policies and procedures for **routine recurring** disclosures of PHI so that the information released is limited to the minimum to achieve the purpose of the disclosure
 - Limit the PHI disclosed in **Non-routine** Disclosures by developing a criteria
 - Review requests for PHI on an individual basis against the criteria

Minimum Necessary Requirement Summary

- You should now be able to:
 - Define the Minimum Necessary Requirement
 - Describe the applicability of requirements of the Minimum Necessary Requirement when applied to various requests and disclosures

Permitted Uses & Disclosures

Permitted Uses & Disclosures

Objectives

- Upon completion of the lesson, you should be able to:
 - Identify the 14 uses and disclosures that are allowed under HIPAA without patient agreement or objection
 - Explain the requirements for those individual uses and disclosures

Permitted Uses & Disclosures

HIPAA Requirements

For the permitted uses and disclosures listed below, a patient's opportunity to agree or object is not required

1. As required by law
2. Avert serious threats to health or safety
3. Specialized government functions/ military provisions
4. Judicial and administrative proceedings
5. Medical facility patient directories
6. Cadaver organ, eye or tissue donation purposes
7. Victims of abuse, neglect or domestic violence
8. Inmates in correctional institutions or in custody
9. Workers' compensation
10. Research purposes
11. Public health activities
12. Health oversight activities
13. About decedents
14. Law enforcement purposes

Permitted Uses & Disclosures

As Required By Law

- A Covered Entity may use or disclose PHI to the extent that such use/disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such

Avert Serious Threats to Health or Safety

- PHI may be disclosed when:
 - The covered entity in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, to identify or apprehend an individual who has made a statement admitting participation in a violent crime
- Apprehension of escaped convicts
 - The covered entity in good faith believes the disclosure is necessary for law enforcement authorities to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody

Permitted Uses & Disclosures

Specialized Government Functions

- Military activities
- Veterans' activities
- National security and intelligence activities
- Protective services for the President
- Medical suitability determinations
- Correctional institutions
- Government programs providing public benefits

Permitted Uses & Disclosures

Military Provisions

- Covered entities may disclose PHI of Service members to appropriate Military Command Authorities:
 - For determination of a member's fitness for duty
 - If necessary to assure proper execution of military mission
 - To carry out any other activity necessary to the proper execution of the mission of the Armed Forces

Relief of Disclosure Accounting from HHS

- Purpose:
 - To request relief from the accounting requirement for disclosures to Military Commanders
 - Military Deputy Surgeon's General have provided a list of disclosures for which they are requesting exemption from
- HIPAA requires accounting for disclosures to Military Commanders
- Letter has been sent from TMA to HHS on March 25, 2005
- **No allowance for variance has been granted to DoD**

Multiple Disclosure Accounting (1 of 6)

- Create standards for multiple disclosures for the same purpose to the same source over a fixed period of time
- Examples (not all inclusive)
 - Fitness for Duty
 - Readiness
 - Immunizations
 - Personnel Reliability Program (PRP)
 - Profile
- As the Tour of duty ends, the disclosure end date must be entered into the PHIMT

Multiple Disclosure Accounting (2 of 6)

- The content of the Disclosure Accounting:
 - The date of the disclosure
 - The name of the entity or person who received the protected health information and, if known, the address of such entity or person
 - A brief description of the PHI disclosed
 - A brief statement of the purpose of the disclosure

Multiple Disclosure Accounting (3 of 6)

- If during the period covered by the accounting, The CE has made multiple disclosures of PHI:
 - To the same person or entity
 - For a single purpose
 - Pursuant to a single authorization
- The recording must be from the first date of the disclosure
- Number of disclosures made during the period of accounting
- The date of the last such disclosure during the accounting period

Permitted Uses & Disclosures

Multiple Disclosure Accounting (4 of 6)

Monday, June 27, 2005 [Patient Search](#) [Logoff](#)

Patient User Admin Requests Requester

Current Patient:
Jordan, Jaunita
02/15/1976
FMP-SSSN:21-
211125994

Summary
Requests
Record Disclosure
Accounting Suspensions
Disclosure Restrictions
Authorization
Patient Profile

[Patient Search](#)

Record Disclosure

*** Requester** *(the organization or person requesting the disclosure)* [Change](#)

Name: Pradeep Org
Address: 1411 Jefferson David, Arlington, VA 20121
Phone:
Contact Person:

Requester Authority *(the authority of the requester)*
Undefined

Request Form *(the form of the disclosure request)*
Undefined

Request Date *(the disclosure request date in MM/DD/YYYY format)*
06/21/2005

*** Recipient** *(the organization or person where the disclosure went)* [Change](#)

Name: Pradeep Org
Address: 1411 Jefferson David, Arlington, VA 20121
Phone:
Contact Person:

*** Disclosure Type** *(the type of disclosure)*
Specialized Government Functions (Active Duty Disclosure)

Disclosure Status *(the status of the disclosure)*
Pending

Permitted Uses & Disclosures

Multiple Disclosure Accounting (5 of 6)

* **Disclosure Date** (the disclosure date in MM/DD/YYYY format)
06/24/2005

Treatment Start Date (the treatment or service start date in MM/DD/YYYY format)
04/01/2005

Treatment End Date (the treatment or service end date in MM/DD/YYYY format)
06/15/2005

Treatment Identifier (the treatment or service identifier)

* **Origin Organization** (where the disclosure originated)
US TMA

* **Disclosure Purpose** (the purpose of the disclosure)
Medical

Other:
While at RTC NRI during this period, the patient injury recovery status from SF600 for a torn meniscus in the right knee was provided weekly as a physical readiness report to the

☐ Complete Health Record(s)
☐ Consultation Report(s)
☐ Discharge Summary
☒ History and Physical Examination
☐ Laboratory Test(s)
☐ Operative Report(s)
☐ Pathology Report(s)
☐ Progress Notes

Other:

In the Other text box, type in the time period of the recurring disclosure

Permitted Uses & Disclosures

Multiple Disclosure Accounting (6 of 6)

The time period of the recurring disclosure will appear on the PHI Disclosure Report

Protected Health Information Disclosure Report

Prepared for: Jaunita Jordan

Requested from: US TMA

Generated on: 06-27-2005

Disclosure ID:	346
Date:	2005-06-24
Disclosure Type:	Specialized Government Functions (Active Duty Disclosure) - Specialized Government Functions (Active Duty Disclosure)
Disclosure Purpose:	While at RTC NRI during this period, the patient injury recovery status from SF600 for a torn meniscus in the right knee was provided weekly as a physical readiness report to the Commanding Officer RTC, Newport, RI to determine fitness for continued duty in the military service. Period ended when returned to full duty on closing date., Medical
Disclosed Health Information:	History and Physical Examination
Disclosure Originated From:	US TMA Five Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041-3206
Disclosure Recipient:	Pradeep Org 1411 Jefferson David, Arlington, VA 20121
Disclosure Requester:	Pradeep Org 1411 Jefferson David, Arlington, VA 20121

Statutory Requirements (1 of 2)

- Authorization for Disclosure of Medical Information to Special Programs Template
 - Intended for Military and Statutory Programs where the release of medical information is required by military authorities to monitor and assess an individual's fitness for participation in the specific program
 - Differs from the DD Form 2870, Dec 2003 "Authorization for Disclosure of Medical or Dental Information"
 - The Authorization for Disclosure of Medical Information to Special Programs cannot be revoked

Statutory Requirements (2 of 2)

- Examples of Statutory Programs
 - Nuclear Weapons Personnel Reliability Program
 - DoD Physical Fitness and Body Fat Program
 - Physical Disability Evaluation
 - Alcohol and Drug Abuse Programs
 - The use of PHI is deemed necessary to assure the proper execution of the military mission
- Incorporate language into appropriate Statutory Programs' authorization forms and into MTF policies and procedures
- This template can be found on the TMA Privacy Office website
 - <http://www.tricare.osd.mil/tmaprivacy/hipaa/hipaacompliance/images/doc/Special-Programs-template.doc>

Permitted Uses & Disclosures

Judicial and Administrative Proceedings

- PHI may be disclosed in response to a:
 - Court order or administrative tribunal, provided that the covered entity discloses only the PHI authorized by the order
 - Subpoena, discovery request, or other lawful process, in the absence of a court order

Permitted Uses & Disclosures

Medical Facility Patient Directories

- A MTF may use and disclose the following PHI for purposes of the facility directory
 - Name
 - Location within the facility
 - Condition in general terms
 - Religious affiliation

Permitted Uses & Disclosures

Decedents

- PHI may be disclosed to:
 - A coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law
 - Funeral Directors as necessary to carry out their duties with respect to the decedent

Permitted Uses & Disclosures

Organ/Tissue Donation

- PHI may be disclosed to organ procurement organizations or other entities engaged in the procurement, banking, or transplantations of cadaveric organs, eyes, or tissues, for the purpose of facilitating donation and transplantation

Permitted Uses & Disclosures

Abuse, Neglect, and Domestic Violence

- PHI may be disclosed about an individual believed to be the victim of abuse, neglect, or domestic violence to a government authority authorized by law to receive reports of abuse, neglect, or domestic violence. This section does not apply to reporting of child abuse or neglect, which is covered above
 - Conditions of disclosure
 - Informing the individual

Inmates in Correctional Institutions or In Custody

- A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary

Permitted Uses & Disclosures

Worker's Compensation

- PHI may be disclosed to the extent necessary to comply with workers' compensation laws or other similar laws that provide benefits for work-related injuries or illness without regard to fault

Permitted Uses & Disclosures

Research

- Compliance with research requirements:
 - Documentation of waiver of individual authorization
 - Institutional Review Board (IRB) approval is required
 - Privacy board approval is required if there is no IRB established within the facility

Review Preparatory to Research

- For review preparatory to research, the researcher must represent that:
 1. Use or disclosure is sought solely to review PHI to prepare protocol or for similar research preparations
 2. No PHI will be removed from the covered entity in the course of review
 3. The PHI is necessary for research purposes
 4. View prior to research

Permitted Uses & Disclosures

Research on Decedents

- For research on decedents' information, the researcher must present that:
 1. Use or disclosure is sought solely for research on PHI of decedents
 2. Documentation, at the request of the CE of the death of the individual
 3. The PHI is necessary for research purposes

Permitted Uses & Disclosures

Public Health Activities

- Prevention/control of diseases, injuries, or disabilities
- Child abuse/neglect
- Communicable diseases
- FDA-regulated products/activities
- Work related illnesses or injuries

Permitted Uses & Disclosures

Health Oversight Activities

- PHI may be disclosed to a health oversight agency for oversight activities authorized by law
 - These include:
 - Audits
 - Civil, administrative, or criminal investigations
 - Inspections
 - Licensure or disciplinary actions
 - Civil, administrative, or criminal proceedings or actions
 - Other activities necessary for appropriate oversight of health care systems, government benefit programs, government regulatory programs, and entities subject to civil rights laws for which PHI is necessary for determining compliance

Permitted Uses & Disclosures

Law Enforcement Purposes

- Reporting certain types of injuries or wounds
- Court ordered warrant, subpoena, or summons Grand jury subpoena
- Administrative Requests
- Locating a suspect, fugitive, material witness, or missing person
- Victims of crimes
- Decedents
- Criminal conduct CE premises
- Medical emergencies

Permitted Uses & Disclosures

Summary

- You should now be able to:
 - Identify the 14 uses and disclosures that are allowed under HIPAA without patient agreement or objection
 - Explain the requirements for those individual uses and disclosures

Other Uses & Disclosures

Other Uses & Disclosures

Objectives

- Upon completion of this lesson, you will be able to:
 - Identify uses and disclosures for Treatment, Payment, and Health Care Operations
 - Explain procedural requirements for Psychotherapy Notes
 - Identify types of Incidental Uses and Disclosures

Other Uses & Disclosures

Uses and Disclosures for TPO (1 of 3)

- You may use and disclose PHI:
 - For your own TPO activities without a patient authorization
 - To another provider for use in treating an individual without a patient authorization
 - To another CE to aide in payment activities without a patient authorization
 - To another DoD CE for use in health care operations without a patient authorization because they are both members of a single Organized Health Care Arrangement (OHCA)
 - For some but not all healthcare operation activities to a non-OHCA member if you both have an established relationship with the individual

Other Uses & Disclosures

Uses and Disclosures for TPO (2 of 3)

- Those health care operations including but not limited to:
 - Quality Assurance (QA) and improvement activities
 - Population based activities relating to improving health or reducing costs
 - Protocol development
 - Case management and care coordination
 - Providing information about treatment alternatives
 - Competence or qualification reviews of health care professionals

Other Uses & Disclosures

Uses and Disclosures for TPO (3 of 3)

- Evaluating provider or practitioner performance
- Health plan performance
- Training programs for health care providers
- Training of non-health care professionals
- Accreditation, certification, licensing, or credentialing activities
- Health care fraud and abuse detection or compliance

Other Uses & Disclosures

Psychotherapy Notes (1 of 2)

- Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the content of conversation during a private counseling session or a group, joint, or family counseling session and that are **separated from the rest of the individual's medical record**
- The disclosure must be accounted for

Other Uses & Disclosures

Psychotherapy Notes (2 of 2)

- Authorization is required, except for:
 - Treatment, payment and health care operations carried out by the:
 - Originator of the psychotherapy notes
 - Covered entity for training
 - Covered entity to defend itself in a legal action
 - Uses and disclosures that are:
 - Required by the Secretary of HHS
 - Required by law
 - For healthcare oversight activities
 - About decedents to coroners and medical examiners
 - To avert a serious and imminent threat to the individual or the public

Other Uses & Disclosures

Incidental Uses and Disclosures

- Incidental use or disclosure is permitted **if** you already comply with all of the minimum necessary requirements and have established appropriate administrative, physical, and technical safeguards to protect the privacy of PHI
- Incidental uses and disclosures include:
 - Overheard conversations among providers or with patients
 - Sign in sheets and calling patient names in waiting rooms
 - Paging patients in the facility
 - Posting patient names by doors
 - Maintaining a chart by patient's bed
 - Discussing patient's condition during rounds

Other Uses & Disclosures

Summary

- You should now be able to:
 - Identify uses and disclosures for Treatment, Payment, and Health Care Operations
 - Explain procedural requirements for Psychotherapy Notes
 - Identify types of Incidental Uses and Disclosures

42 CFR Part 2 vs. DoD 6025.18-R

Objectives

- Upon completion of this lesson, you should be able to:
 - Describe the differences between the 42 CFR Part 2 and the DoD Regulation

42 CFR – Drug and Alcohol Treatment

- General Rule
- Substance abuse treatment programs must comply with both rules
- When disclosures are permitted
- Part II Consent and Privacy Rule Authorization
 - A CE may not disclose any information unless the patient has signed an authorization
 - The minimum necessary requirement applies

General Rules (1 of 3)

- Two laws enacted in the early 1970's (one for alcohol, one for drugs)
- Guarantee strict confidentiality of information about persons receiving alcohol and drug prevention and treatment services
- Regulations implementing the statutes were issued in 1975 Titled 42 U.S.C 290-2

General Rules (2 of 3)

- DoD requires substance abuse treatment programs to comply with the Public Health Service, Department of Health and Human Services (HHS), Confidentiality of Alcohol and Drug Patient Records (42 CFR Part 2) and the Department of Defense Health Information Privacy Regulation (DoD 6025-18R)

42 CFR Part 2 vs. DoD 6025.18-R

General Rules (3 of 3)

- 42 CFR Part 2: Public Health Service, HHS, Confidentiality of alcohol and drug abuse patient records
 - Programs may not use or disclose any information about any patient unless patient has consented in writing (on a form that meets the requirements established by the regulations) or unless another very limited exception specified in the regulation applies
 - Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure
- DoD Health Information Privacy Regulation
 - The Privacy Regulation permits uses and disclosures for “treatment, payment, and health care operations” as well as certain other disclosures without the individuals authorization
 - Disclosures not otherwise specifically permitted or required by the Privacy Regulation must have an authorization that meets certain requirements
 - With certain exceptions, the Privacy Regulation generally requires that uses and disclosures of PHI be the minimum necessary for the intended purpose of the use or disclosure

Disclosure for Payment

42 CFR Part 2	HIPAA Privacy Rule
Prohibits these disclosures without patient consent	Permits disclosures without patient consent for the purposes of payments

Must follow 42 CFR Part 2

Patient Rights & Administrative Requirements

42 CFR Part 2	HIPAA Privacy Rule
Not Included	Imposes several new administrative requirements and establishes new patient rights

Must follow HIPAA

Personal Representatives

42 CFR Part 2	HIPAA Privacy Rule
Limits those who may act in the place of the patient to individuals who have been legally appointed the patients' legal guardian	Permits a "personal representative" (e.g. power of attorney) to sign consent forms on behalf of the patient

Must follow 42 CFR Part 2

Re-Disclosure of Information

42 CFR Part 2	HIPAA Privacy Rule
Requires that a statement prohibiting re-disclosure accompanies the patient information that is disclosed	Not applicable

Must follow 42 CFR Part 2

Disclosures to Other Providers

42 CFR Part 2	HIPAA Privacy Rule
Limits this to medical emergencies	<p>Allows, but does not require programs to make disclosures to other healthcare provider without authorization</p> <p>Identify staff persons or classes of persons in its workforce who need access to PHI, categories of PHI they need access to, and any condition appropriate to such access</p>

Must follow 42 CFR Part 2

42 CFR Part 2 vs. DoD 6025.18-R

Medical Emergencies

42 CFR Part 2	HIPAA Privacy Rule
<p>Medical Emergencies</p> <p>Limits this disclosure to medical personnel ONLY</p>	<p>Medical Emergencies</p> <p>Allows health care providers to inform family members of the individual's location and condition without consent in emergency circumstances or if a person is incapacitated</p>

Must follow 42 CFR Part 2

Disclosures to Public Health

42 CFR Part 2	HIPAA Privacy Rule
Prohibits these disclosures unless there is an authorization, court order, or the disclosure is done with out revealing patient information	Permits disclosures to public health authority for disease prevention or control, or to a person who may have been exposed to or at risk of spreading a disease or condition

Must follow 42 CFR Part 2

Court Orders

42 CFR Part 2	HIPAA Privacy Rule
Has specific requirements	Makes no mention of any standards or procedures that a court must follow when issuing a court order

Must follow 42 CFR Part 2

Disclosures of Abuse

42 CFR Part 2	HIPAA Privacy Rule
Limits the exception to initial reports of child abuse or neglect (no other kinds of abuse or neglect)	Permits disclosures about any individual believed to be a victim of abuse, neglect or domestic violence. The exception is child abuse or neglect permitted by DoD 6025.18R C7.2.1.2

Must follow 42 CFR Part 2

Right to Access Records

42 CFR Part 2	HIPAA Privacy Rule
Gives programs DISCRETION to decide whether to permit patients to view or obtain copies of their records, unless they are governed by state law that gives right to access	REQUIRES a covered entity to give an individual access to his/her own health information (with a few exceptions)

Must follow HIPAA

Notice of Privacy Practices

42 CFR Part 2	HIPAA Privacy Rule
Requires the notice must be given at admission or as soon as a patient is capable of rational communication	Requires the Privacy Notice to be given at the time of first service

Must follow HIPAA

42 CFR Part 2 vs. DoD 6025.18-R

Minimum Necessary

42 CFR Part 2	HIPAA Privacy Rule
Overrides these permissible exceptions to “Minimum Necessary”	Does not apply to uses or disclosures to or by a provider for treatment made pursuant to a consent or compliance and enforcement required by law for compliance with the regulations

Providers must limit ALL DISCLOSURES to that information which is necessary to carry out the purpose of the disclosure (except to the patient themselves)

Summary

- You should now be able to:
 - Describe the differences between the 42 CFR Part 2 and the DoD Regulation

Accounting for Disclosures

Accounting for Disclosures

Objectives

- Upon completion of this lesson, you will be able to:
 - Describe documentation requirements
 - Identify the requirements prior to making a disclosure
 - Explain the elements of a valid authorization
 - Identify appropriate authorization documents
 - Identify the use of the Protected Health Information Management Tool (PHIMT)

Accounting for Disclosures

Requirement

- Individuals shall have the right to receive an accounting of protected health information disclosures made by the military/dental treatment facility during the six years prior to the request, except for disclosures for treatment, payment, and healthcare operations, and disclosures based on a patient authorization
- You are not required to account for disclosures that occurred prior to the April 14, 2003 compliance date

Considerations Prior to Making a Disclosure

- Patient notification
- Mutually agreed upon alternative communications
- Mutually agreed upon authorizations
- Potential for serious threat or imminent danger to patient or public
- Authority of requester
- Minimum necessary
- Can information be de-identified
- Documentation

Documenting Disclosures (1 of 2)

- The documentation for each disclosure must include the following:
 - The date of disclosure
 - The name of the entity or person who has requested/received the PHI and if known, the address of such entity or person
 - A brief description of the PHI disclosed
 - A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such statement, a copy of a written request for a disclosure, if any
 - The PHIMT contains these fields and will meet this requirement

Documenting Disclosures (2 of 2)

- Verification Requirements
 - Covered entities must verify the identity and authority of the individuals seeking disclosure of the PHI
- Minimum Necessary
 - Minimum Necessary standard applies to all disclosures made under 45 CFR § 164.512, except those required by law
- Documentation
 - All disclosures/uses must be documented in the individuals record, and must be accounted for if the individual requests a disclosure

Accounting for Disclosures

Authorization

- An authorization is not required for disclosures made under TPO
- Covered entities cannot condition the provision of treatment, payment, enrollment or eligibility upon an authorization
- Individuals have the right to request a restriction of the use of their PHI
- PHIMT can be used to manage authorizations and the right to request restrictions

Accounting for Disclosures

Elements of Valid Authorizations

- Description of the information to be used or disclosed
- Name of person(s) authorized to make the request
- Name of person(s) to whom the requested use or disclosure may be made
- An expiration date or an expiration event
- Statement of the patient's right to revoke authorization, exceptions to this right and how the patient may revoke the authorization
- Statements that information used or disclosed may be subject to re-disclosure by the recipient and thereby no longer protected under HIPAA
- Signature of the patient and date
- If signed by a patient representative, a description of the representative's authority is required

Accounting for Disclosures

Authorization at Request of MTF

- A covered entity must request authorization from the patient to use or disclose PHI for its own use or disclosure
- In addition to the minimum elements for valid authorization, include:
 - Statement that neither treatment, payment, enrollment nor eligibility will be conditioned upon authorization
 - Description of each purpose of the requested use or disclosure
 - Statement that patient may inspect or copy PHI to be used or disclosed
 - Indication of whether use or disclosure of requested information will result in direct or indirect remuneration to the covered entity from the third party

Accounting for Disclosures

Verification of Requesting Party

- If a request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status is required
- If a request is in writing, request must be on appropriate government letterhead
- If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency such as a contract for services, MOU, or purchase order, that establishes that the person is acting on behalf of the public official

Authorization to Disclose Medical or Dental Information (DD Form 2870)

- An authorization is a written document, signed by the patient, that specifically allows the covered entity to disclose PHI with patient's permission
- Guidelines regarding use of this form are contained in DOD Regulation 6025.18-R
- <http://www.tricare.osd.mil/tmaprivacy/hipaa>
- This form can also be accessed through the PHIMT



Request to Restrict Medical or Dental Information (DD Form 2871)

- The purpose of this form is to provide the patient with a means to request a restriction on the use and disclosure of his/her protected health information
- Guidelines regarding use of this form are contained in DOD Regulation 6025.18-R
- <http://www.tricare.osd.mil/tmaprivacy/hipaa>
- This form can also be accessed through the PHIMT



Accounting for Disclosures

Summary

- You should now be able to:
 - Describe documentation requirements
 - Identify the requirements prior to making a disclosure
 - Explain the elements of a valid authorization
 - Identify appropriate authorization documents
 - Identify the use of the Protected Health Information Management Tool (PHIMT)

Presentation Summary

- You should now be able to:
 - Define Uses and Disclosures
 - Identify the legal and regulatory requirements
 - Explain requirements of the Minimum Necessary Requirement
 - Identify Permitted Uses and Disclosures
 - Other Uses and Disclosures
 - Describe the special requirements for Psychotherapy Notes
 - Define Incidental Uses and Disclosures
 - Explain the process and requirements for Accounting of Disclosures

Resources

- DoD 6025.18-R, “DoD Health Information Privacy Regulation”, January 2003
- www.tricare.osd.mil/hipaa/privacy
- privacymail@tma.osd.mil for subject matter questions
- hipaasupport@tma.osd.mil for tool related questions\
- <http://www.tricare.osd.mil/tmaprivacy/Mailing-List.cfm> to subscribe to the TMA Privacy Office E-News
- Service HIPAA Privacy Representatives



HEALTH AFFAIRS



Please fill out your critique

Thanks!

